

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 7 of 2004.

Date of Decision: 12.10.2007

Assistant Engineer, HPPWD

... Appellant

Versus

Smt. Meera Devi & ors.

... Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Appellant(s) : Mr. J.S.Guleria, Law Officer.

For the Respondent(s) : Mr. T.S.Chauhan, Advocate.

Deepak Gupta, J (Oral).

This appeal has been admitted on the following question of law:

“Whether the Commissioner under the Workmen's Compensation Act, 1923 has passed the award exceeding his jurisdiction by calculating the amount of compensation on the basis of the wages at Rs.4000/- per month.

The undisputed facts of the case are that the accident took place on 18.11.2000. The amendment in the Workmen's Compensation Act came into effect on 8.12.2000 i.e. 20 days after the occurrence. The only question is whether the maximum wages

of Rs.2000/- under the unamended Act have to be taken into consideration or maximum wages of Rs.4000/- as per the amended Act have to be taken into consideration. This question is no longer res integra.

A four –Judge Bench of the Apex Court in **Pratap Narain Singh Deo v. Srinivas Sabata** (1976 1 SCC 289) has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workman by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim. This judgment was followed in **Kerala State Electricity Board and another v. Valsala K.and another** (1999) 8 SCC 254). The same view has been taken in **Oriental Insurance Co. Ltd. v. Khajuni Devi and others** (2002) 10 SCC 567).

This Court has also consistently taken the view the rights of the parties are governed by law as it exists on the date of the accident. His view has been taken in **United India Insurance Company Ltd. v. Smt. Nako alias Naiku Devi**, 1996 (1) Sim. LC 370, when it was held as follows:-

“8. We may refer to Maxwell on interpretation of statutes. Twelfth Edn. P 215, regarding retrospective operation of statutes in the following terms:

“Upon the presumption that the legislature does not intend that is unjust rests the leaning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed

unless a retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary distinct implication."

9. Applying the above settled law of interpretation, we hold that as the accident took place prior to the amendment of the Schedule IV of the Act, the compensation has to be assessed according to un-amended Schedule. We say so as if retrospective operation is given to the amended Schedule, it will take away the rights of the parties, namely, the owner as well as the Insurance Company, in this regard. Therefore, the Commissioner erred in law in assessing the compensation under the amended Schedule IV".

To similar effect are also the decisions of this Court in **H.P. State Forest Corporation Ltd. v. Ganu Devi and others**, Latest HLJ 2004 (HP) 945 and in **Executive Engineer, B & R, HPPWD, Solan and anr. v. Kewal Ram**, FAO No.261 of 2003 decided on 17.7.2004.

In fact, I have also take the same view in FAO No.252 of 1998 and FAO No. 308 of 1995 decided on 12.5.2005, as well as **New India Assurance Co. Ltd. v. Nand Lal and another** , Latest HLJ 2006 (HP) 456.

In view of the aforesaid law, it is clear that the maximum wages which should be taken into consideration for calculating the compensation are Rs. 2000/- per month. In case the maximum wages of Rs. 2000/- per month are taken into consideration than the amount of compensation works out to Rs.2,13,570/-. The relevant factor is 213.57, keeping in view the fact that the workman was aged 27 years.

However, I do feel that the penalty imposed by the learned Commissioner @ 5% on the compensation amount is very much on the lower side. In every case, the employer is required to deposit the compensation amount within 30 days of the accident. In the case of the State, which is expected to be a model employer, it is expected that this compensation is deposited forth with. In case the employer fails to deposit this amount, in normal course, penalty @ 50% should be imposed unless the employer shows extenuating circumstances for reducing the penalty. Since in the present case, there are no extenuating circumstances penalty @ 50% i.e. Rs.1,06,785/- is imposed. The claimant shall also be entitled to interest at the rate of 12% per annum on the amount of compensation of Rs. 2,13,570/- from the date of accident till payment of the amount.

The amount of compensation and penalty i.e. Rs.3,20,355/- is apportioned as follows:-

- | | | |
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| 1. | Smt. Meera Devi wife of
the deceased | Rs.1,20,355/- |
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All the other claimants shall be entitled to a sum of Rs. 40,000/- each.

The appeal is disposed of in the aforesaid terms. No costs.

October 12, 2007
s.

(Deepak Gupta), J.